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No. 83-259

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

EASTERN AIR LINES, INC.,
Petitioner,

v.

ATLANTIC RICHFIELD COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the Temporary Emergency Court of Appeals of the United States

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether the courts below erred in declining to award petitioner prejudgment interest, where the trial court, exercising its discretion, found the amount claimed as an overcharge to be too uncertain to sustain an award, and where the applicable federal statute provides that, if an overcharge is unintentional, damages shall be "limited to the amount of the overcharge."

II. Whether a private plaintiff under the Emergency Petroleum Allocation Act of 1973 is entitled to recover, in addition to the full amount of any overcharges it incurred, an additional amount several times as large representing a portion of the alleged overcharges to other purchasers.

LIST OF CORPORATE SUBSIDIARIES AND AFFILIATES

The partially owned subsidiaries and affiliates of the Atlantic Richfield Company are:

Acerlan, S.A.
Alyeska Pipeline Service Company
Anaconda-Ericsson Inc.
Anaflex, S.A. de C.V.
Anamax Mining Company
Arilan, S.A. de C.V.
Atlantic Richfield de Mexico, S.A. de C.V.
Aughinish Alumina, Ltd.
Aughinish Estates
Aughinish Finance, Ltd.
Badger Pipe Line Company
Bingham Development Company
Black Lake Pipe Line Company
Blair Athol Coal Pty., Limited
Caribou-Chaleur Bay Mines Ltd.
Centroamericana de Cobre, S.A.
Cobre De Hercules, S.A.
Cobrecel, S.A. De C.V.
Colonial Pipeline Company
Compania De Petroleo Ganso Azul, Ltda.
Compania Minera Dos Republicas, S.A. de C.V.
Compania Minera Kappa, S.A.
Compania Minera Penacobre, S.A.
Cook Inlet Pipe Line Company
Cupro San Luis, S.A. de C.V.
Delaware Bay Transportation Company
Dexter De Mexico, S.A.
Dixie Pipeline Company
East Texas Salt Water Disposal Co.
Eisenhower Mining Company
Empresa De Comercio Exterior Mexicano, S.A. de C.V.
Energy Transportation Systems, Inc.

Fip, S.A.
Flower Street Limited
F.T.L. Company Limited
Gravity Adjustment, Inc.
Griffith Consumers Company
Hardy Oil Company
Hydrokem Performance Chemicals Company
Imperial Eastman De Mexico, S.A.
Impulsora De Cobre, S.A. de C.V.
Industrias Nacobre, S.A. de C.V.
Industrias Tecnos, S.A. de C.V.
Inval, S.A.
Iricon Agency Ltd.
Jamaica Alumina Security Company Ltd.
Kenai Pipe Line Company
Kronos, Computacion y Teleproceso, S.A. de C.V.
Kuparuk Transportation Company
Las Quintas Serenas Water Company
Lavan Petroleum Co.
Lingobronce, S.A.
Magnaval, S.A.
Manquera Flex, S.A. de C.V.
Manufacturera Mexicana De Partes Para Automoviles, S.A. de C.V.
Mayflower Mining Company
R. W. Miller (Holdings) Limited
Minera Anaconda Limtada
Montoro, Empresa Para La Industria Quimica Nacional De Cobre, S.A.
New Bingham Mary Mining Company
Nihon Oxirane Company, Ltd.
Oil Shippers Service, Inc.
P. T. Arutmin Indonesia
Panaval, S.A.
Park Cummings Mining Company
Park Premier Mining Company
Participaciones Mexicanas, S.A. de C.V.
Patten Mining Company

Platte Pipe Line Company
Productos Especiales Metalicos, S.A.
Servicios Industriales Nacobre, S.A.
Sinclair Venezuelan Oil Company
Smoke House Copper Mining Company
Solvamex, S.A. de C.V.
Swecomex, S.A.
Tecumseh Pipe Line Company
Texas-New Mexico Pipe Line Company
Trans Mountain Oil Pipe Line Company
Tubos Flexibles, S.A.
Union de Credito Industrial Vallejo, S.A.
The Walworth Company
West Mayflower Mining Company
William Prym de Mexico S.A.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent Atlantic Richfield Company respectfully requests that this Court deny the petition for writ of certiorari seeking review of the judgment of the Temporary Emergency Court of Appeals ("TECA") in this case.

SUMMARY OF ARGUMENT

Petitioner Eastern Air Lines, Inc. brought a private action to recover alleged overcharges on jet fuel pursuant to the regulatory system of the Emergency Petroleum Allocation Act of 1973 ("EPAA"), 15 U.S.C. §§ 751 *et seq.* (1976 & Supp. V 1981). Following trial in the district court, petitioner prevailed on only one of the numerous theories of liability it had advanced, recovering some but not all of the damages it sought. Petitioner's requests for prejudgment interest, attorney's fees and

multiple damages were denied. TECA affirmed the district court in all respects. Petitioner now seeks review of TECA's rulings on prejudgment interest and on the computation of damages.

The denial of prejudgment interest in this case accords with the prevailing federal law governing awards of prejudgment interest. The general rule is that the availability of prejudgment interest under federal statutes is determined independently for each statute on the basis of congressional intent and general equitable principles. *See Rodgers v. United States*, 332 U.S. 371, 373 (1947). Here, the district court reasonably interpreted the applicable statutory provision to preclude an award of prejudgment interest, and this decision was reviewed by TECA, a specialized court with exclusive jurisdiction in this area.

Moreover, the prevailing law is that prejudgment interest, even where it is available, " 'is not recovered according to a rigid theory of compensation for money withheld, but is given in response to considerations of fairness. It is denied when its exaction would be inequitable.' " *Blau v. Lehman*, 368 U.S. 403, 414 (1962), *quoting Board of Commissioners v. United States*, 308 U.S. 343, 352 (1939). The courts below held that, because of the great uncertainty regarding the amount of the alleged overcharge, it would be inappropriate to award prejudgment interest here.

Since TECA was established by Congress as a nationwide court with exclusive jurisdiction over actions arising under the EPAA, no circuit conflict can occur on this issue. Nor, given the anomalous procedural history of this litigation and the special nature of the EPAA regulatory scheme, would this be an appropriate case in which to fashion new principles to govern the awarding of prejudgment interest.

Petitioner's second claim—that the courts below erred in computing the damages—raises no issue warranting

review by this Court. This damage claim arises in the context of a complex system of accounting with which TECA is thoroughly familiar. Petitioner seeks damages far greater than its proportionate share of the overcharges actually incurred. Permitting petitioner to obtain a judgment several times larger than the damages it actually suffered would be inequitable and would conflict with the district court's conclusion that multiple damages were not warranted. Accordingly, the petition should be denied.

ARGUMENT

I. THE HOLDING BELOW ON PREJUDGMENT INTEREST CREATES NO CIRCUIT CONFLICT, AND FAILS TO PRESENT A SIGNIFICANT ISSUE JUSTIFYING REVIEW BY THIS COURT

A. The Decisions Below Are Consistent with the Basic Principles Governing Award of Prejudgment Interest Under Federal Statutes

The district court here denied petitioner's request for prejudgment interest on two grounds. First, it held that the applicable statute, section 210 of the Economic Stabilization Act ("ESA"), 12 U.S.C. § 1904 note (1976 & Supp. V 1981),[1] evidences a congressional intent not to award prejudgment interest to private plaintiffs seeking damages for alleged overcharges. A111.[2] The court noted that, where an overcharge is found to be intentional, the successful plaintiff may be awarded attorney's fees and, in the discretion of the court, an amount up to three times the damages sustained. *Id.*; *see* A114. However, the court observed, "if an overcharge is found to have been unintentional, damages shall be 'limited to the amount of the

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[1] The section 210 private action was originally enacted as part of the Economic Stabilization Act of 1970, and subsequently was incorporated by reference into the EPAA. *See* A113, A141.

[2] Citations to the appendix will be in the form "A ——." The petition for writ of certiorari will be cited as "Pet. at ——."

overcharge.'" A111, *citing* section 210.[3] "In light of [this] specific limitation on the remedy available," the court concluded, "we cannot infer that Congress intended to make a further remedy available." A111.

As a second ground for its holding, the district court invoked its discretion. "Even if prejudgment interest were permissible under the statute authorizing the private action," the court said, "this is not an appropriate case to award prejudgment interest. . . . In the case before us, the sums claimed to be due have remained uncertain throughout the protracted litigation and were not reasonably capable of being ascertained." A112.

TECA affirmed the denial of prejudgment interest, reiterating the district court's finding that "Congress had placed a specific limitation on the remedy which was not meant to be exceeded by prejudgment interest," A17, and "agree[ing] with" the trial court "that prejudgment interest is not available where the amount of damages claimed to be due is uncertain." *Id.* "At all times during this litigation," the court of appeals explained, "the amount claimed by Eastern was the subject of great uncertainty, and it would be inequitable and unjust to make such an award in this case." *Id.*

Neither ground relied upon below raises an issue justifying review by this Court. The holding that prejudgment interest is not available in section 210 private actions is clearly a reasonable interpretation of the

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[3] As TECA noted, the district court expressly found that respondent "had proved that the overcharge was unintentional and, in detail and in substance, found that [respondent] acted in good faith and 'maintained procedures reasonably adapted to the avoidance of overcharges.'" A21. The trial court further found that respondent's "compliance efforts were a major task, utilizing substantial staff resources," A88, and that "there was no intent on the part of [respondent] to effect the underlying overrecoveries." A90. Petitioner has not sought review of the denial of multiple damages and attorney's fees.

statute. As this Court has held, the question whether prejudgment interest is available under a particular statutory scheme depends upon general equitable principles and the specific congressional intent manifested in the statute. "[I]n the absence of an unequivocal prohibition of interest on such obligations, this Court has fashioned rules which granted or denied interest on particular statutory obligations by an appraisal of the congressional purpose in imposing them and in the light of general principles deemed relevant by the Court." *Rodgers v. United States*, 332 U.S. 371, 373 (1947).

Contrary to petitioner's argument, *see* Pet. at 5, 11, the mere fact that the statute has an underlying compensatory purpose does not, without more, establish that prejudgment interest is appropriate. As this Court held in *Brooklyn Savings Bank v. O'Neill*, 324 U.S. 697 (1945), the availability of multiple or liquidated damages in a federal remedial statute is a strong indication that Congress did not intend to grant prejudgment interest as an additional remedy. *Id.* at 715.[4] Moreover, the statute itself plainly states that, in the case of unintentional overcharges, the plaintiff's recovery shall be "limited to the amount of the overcharge." A114-A115. The interpretation of this provision by the district court was consistent with the principles outlined above, and was reviewed by TECA, a specialized court entrusted by Congress with exclusive jurisdiction over cases arising under this statute. *See* 12 U.S.C. § 1904 note (§ 211(b)(2)) (1976); A141-A142. Any questions of interpretation that may arise in the future concerning these provisions can likewise be resolved by TECA.[5]

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[4] *See also* American Timber & Trading Co. v. First Nat'l Bank of Oregon, 690 F.2d 781, 785 (9th Cir. 1982); United States v. Foster Wheeler Corp., 447 F.2d 100, 102 (2d Cir. 1971).

[5] Both petitioner and the *amici curiae* note a seeming inconsistency between the TECA decision here and the district court decision in Dyke v. Gulf Oil Corp., No. 77-10-PA (unpublished) (D.

The decisions below are also soundly based on equitable considerations traditionally considered by courts in determining the permissibility of prejudgment interest in particular circumstances. Under prevailing case law, even where prejudgment interest is found to be allowable under a given statute, it is generally held that the decision whether to award such interest is within the discretion of the trial judge.[6] As this Court has stated, "'[I]nterest is not recovered according to a rigid theory of compensation for money withheld, but is given in response to considerations of fairness. It is denied when its exaction would be inequitable.'" *Blau v. Lehman*, 368 U.S. 403, 414 (1962), *quoting Board of Commissioners v. United*

Ore. Aug. 24, 1983), which granted prejudgment interest in a private overcharge action. Pet. at 6 n.2; Brief of Independent Oil and Tire Co., *et al.*, as *Amici Curiae* at 5. The *Dyke* case has not yet been presented to TECA for review, however, and there is no reason to believe TECA cannot adequately reconcile the result reached here with the result it reaches in *Dyke*.

United States v. Exxon Corp., 561 F. Supp. 816 (D.D.C. 1983), *appeal docketed*, No. DC-93 (TECA July 6, 1983), which is also cited as inconsistent with the decision below, *see* Pet. at 6 n.2; *Amici Curiae* Brief at 5, is distinguishable on the ground that it is a government, and not a private, overcharge action. *See* discussion at p. 9 *infra*. In any event, TECA will also have an opportunity to review the district court decision in *Exxon*, and any assertions of conflict at this time are premature.

[6] *E.g.*, Robinson v. Watts Detective Agency, 685 F.2d 729, 742 (1st Cir. 1982), *cert. denied*, 103 S. Ct. 728 (1983); Twin City Sportservice, Inc. v. Charles O. Finley & Co., 676 F.2d 1291, 1310 (9th Cir.), *cert. denied*, 103 S. Ct. 364 (1982); Bricklayers' Pension Trust Fund v. Taiariol, 671 F.2d 988, 990 (6th Cir. 1982); Syvock v. Milwaukee Boiler Mfg. Co., 665 F.2d 149, 162 (7th Cir. 1981); Lodges 743 and 1746, Int'l Ass'n of Machinists v. United Aircraft Corp., 534 F.2d 422, 446 (2d Cir. 1975), *cert. denied*, 429 U.S. 825 (1976); Thomas v. Duralite Co., 524 F.2d 577, 589 (3d Cir. 1975); Occidental Life Ins. Co. v. Pat Ryan & Associates, 496 F.2d 1255, 1268 (4th Cir.), *cert. denied*, 419 U.S. 1023 (1974); Wolf v. Frank, 477 F.2d 467, 479 (5th Cir.), *cert. denied*, 414 U.S. 975 (1973).

States, 308 U.S. 343, 352 (1939).[7] One of the factors which may properly guide the district court's exercise of its discretion is whether the amount at issue was a sum certain, or fairly ascertainable, on a given date prior to trial.[8]

Here, the courts below properly took into account the lack of certainty with respect to damages. *See* A111, A17. Petitioner does not appear to present any challenge to

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[7] Exceptions to this general rule are made only when a specific congressional intent to make prejudgment interest mandatory is discerned. For example, the Fifth Circuit has held that prejudgment interest is mandatory in a railroad's action to recover tariff undercharges, on the theory that the statutory tariff system makes the amount due certain. Louisiana & Ark. Ry. v. Export Drum Co., 379 F.2d 311, 317 (5th Cir. 1966). Similarly, in certain employer-employee contexts, it has sometimes been held that prejudgment interest is required because of the prejudicial effect on an employee of having his wages or benefits withheld unlawfully. *E.g.*, Clinchfield Coal Co. v. Cox, 611 F.2d 47, 49 (4th Cir. 1979) (black lung benefits); McClanahan v. Mathews, 440 F.2d 320, 325-26 (6th Cir. 1971) (Fair Labor Standards Act); Hodgson v. American Can Co., 440 F.2d 916, 922 (8th Cir. 1971) (same); *see also* West v. Harris, 573 F.2d 873, 882 (5th Cir. 1978), *cert. denied*, 440 U.S. 946 (1979) (prejudgment interest required under National Flood Insurance Act to compensate victims of disaster).

On the other hand, at least two of the cases cited by petitioner as supporting the mandatory award of prejudgment interest, *see* Pet. at 12 n.7, seem instead to be affirmances of the exercise of discretion by the trial court or agency. *See* Dependahl v. Falstaff Brewing Co., 653 F.2d 1208, 1219 (8th Cir.), *cert. denied*, 454 U.S. 968 (1981) (prejudgment interest award affirmed where "exact amount of the liability . . . was never in issue"); Philip Carey Mfg. Co. v. NLRB, 331 F.2d 720, 729-31 (6th Cir.), *cert. denied*, 379 U.S. 888 (1964) (Board's authority to award interest in its discretion affirmed).

[8] *E.g.*, Robinson v. Watts Detective Agency, 685 F.2d 729, 742 (1st Cir. 1982), *cert. denied*, 103 S. Ct. 728 (1983); Belcher v. Birmingham Trust Nat'l Bank, 488 F.2d 474, 478 (5th Cir. 1973); Restatement on Restitution, § 156(a), (b) (1937).

the factual basis for this holding.[9] Indeed, it is evident from a cursory examination of the record in this case that petitioner adopted and discarded theories and methodologies with abandon, a process which continued until the post-trial briefs were filed.[10] Only a seer could have determined before the judgment was rendered what amount, if any, was due petitioner. In addition, the courts below appear to have considered the unfairness to defendant of awarding prejudgment interest, particularly where the violation was found to be unintentional and in good faith. *See* A17, A111. Since the district court's exercise of its discretion is reviewable only under an "abuse of discretion" standard,[11] little purpose would be served by Supreme Court review.

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[9] The statement by *amici curiae* that the damages here were readily ascertainable because of a "formula" contained in the EPAA regulations, *see Amici Brief* at 5, is simply wrong. As the district court determined, "the sums claimed to be due have remained uncertain throughout the protracted litigation and were not reasonably capable of being ascertained." A111. *See also* A110.

[10] For example, throughout discovery, petitioner took the position that it should have been placed in a class of purchasers consisting of respondent's major commercial airline customers west of the Rockies. When evidence on this issue proved unfavorable, petitioner abandoned this contention and argued that it should have been placed in a single member class composed only of itself. *See* A97. After trial, petitioner asserted for the first time that it should have been placed in a class of purchasers together with an electric utility. *See* A98-A100.

As another example, petitioner contended up to and during the trial that respondent had erred in its computations with respect to the cost of purchased finished products. This contention—which would have had an impact upon the total damages under the retroactive reallocation claim—was effectively abandoned in the post-trial briefs. *See* A110-A111.

[11] *E.g.*, United States v. California State Bd. of Equalization, 650 F.2d 1127, 1132 (9th Cir. 1981), *aff'd*, 456 U.S. 901 (1982); Oil, Chemical & Atomic Workers Int'l Union v. American Cyanamid Co., 546 F.2d 1144, 1144 (5th Cir. 1977).

As for the contention that the result reached below is in conflict with the rules applied in government overcharge actions, *see* Pet. at 7, several important considerations must be kept in mind. First, in a government overcharge action, treble damages and attorney's fees are not available. 12 U.S.C. § 1904 note (§ 209) (1976). Second, government overcharge actions are brought pursuant to section 209 of the ESA, while private actions are governed by section 210. Section 209 specifically authorizes a court, in enforcing a government remedial order, to award "restitution of moneys received" in excess of applicable price ceilings, 12 U.S.C. § 1904 note (§ 209) (1976), and restitution may include prejudgment interest. Restatement on Restitution, § 156 (1937); D. Dobbs, *Remedies*, § 3.5 at 169 (1973). Finally, both private actions and government overcharge actions are subject to exclusive TECA review, so that any disparities which may arise in this area can be reconciled without this Court's intervention.

Lastly, petitioner's argument that prejudgment interest is necessary to discourage intentional violations of the regulations, *see* Pet. at 6, disregards the finding below that any violation which occurred here was unintentional. *See, e.g.*, A21, A90. Because of the complexities of allocating allowable cost increases among various categories of products and customers, *see, e.g.*, A30-A78, even the courts and agencies most involved with this program have frequently observed that confusion is inevitable. *See, e.g.*, *Longview Refining Co. v. Shore*, 554 F.2d 1006, 1023, 1024-62 (TECA), *cert. denied*, 434 U.S. 836 (1977).[12] Because violations can occur unintentionally, and perhaps even unavoidably, prejudgment interest would not be a deterrent in many circumstances.

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[12] As TECA said in the decision below, "This court has previously noted the obvious complexity and 'frequent correction, modification, change and clarifying rulings' of the applicable regulations in this case." A6.

At the same time, any company which willfully or intentionally violated the regulations subjected itself to serious administrative sanctions, *see* 12 U.S.C. § 1904 note (§ 208(a)) (1976), as well as to possible treble damages under the EPAA. For this reason, the possible additional deterrent effect of prejudgment interest is unnecessary. Moreover, since the price controls applicable here have been lifted,[13] there is no significant future threat of deliberate violations. In these circumstances, it can hardly be maintained that the integrity of the EPAA regulatory system will be undermined or destroyed, *see* Pet. at 7, simply because a particular private plaintiff has been denied prejudgment interest in a case where any overcharge was found to be unintentional, A82-A92, and where defendant was found to have had no way to ascertain before the entry of judgment the amount that it was alleged to owe. A112, A17.

B. Even If the General Law on Prejudgment Interest Were in Serious Conflict, Which It Is Not, This Is Not an Appropriate Case in Which to Lay Down New, Definitive Principles

Petitioner's attempt to portray this case against a backdrop of total confusion in the law of prejudgment interest misses the critical legal and equitable distinctions underlying the case law. Most of these supposed conflicts can be explained quite simply on the basis of the principle endorsed by this Court in *Rodgers v. United States*, 332 U.S. 371 (1947): that the analysis of prejudgment interest should proceed on a statute-by-statute basis. The fact, for example, that prejudgment interest has been held to be required under the National Flood Insurance Act, *see West v. Harris*, 573 F.2d 873, 882-83 (5th Cir. 1978), while it is merely discretionary under other statutes, such as the Securities Exchange Act, *see Huddleston v. Herman & MacLean*, 640 F.2d 534, 560

[13] *See* Executive Order 12,287, 46 Fed. Reg. 9909 (1981).

(5th Cir. 1981), *aff'd in part and rev'd in part on other grounds*, 103 S. Ct. 683 (1983), says nothing more than that the same court of appeals discerned a different congressional intent in those distinct statutory schemes. Similarly, many of the specific conflicts asserted by petitioner prove, upon close examination, to be fully reconcilable. *See* Pet. at 11; *compare, e.g., American Timber & Trading Co. v. First National Bank of Oregon*, 690 F.2d 781, 784 (9th Cir. 1982) (prejudgment interest denied on claim for usurious interest under National Bank Act where double damages available), *with First Empire Bank-New York v. FDIC*, 634 F.2d 1222, 1224-25 (9th Cir. 1980), *cert. denied*, 452 U.S. 906 (1981) (interest granted on obligations of defunct bank from date of maturity where obligees' claims had been erroneously disallowed by federal receiver).

Even if there were substantial confusion in the law of prejudgment interest, however, it is not clear how a decision in this case could rectify the situation. As noted above, the holding of the courts below rested in part on the district court's exercise of its discretion not to award prejudgment interest, even if it were available, because of uncertainty over the amount due. In addition, because of the special features of this statute—the availability of a parallel administrative enforcement mechanism and the provision for discretionary multiple damages and attorney's fees—a decision here would have little precedential value in interpreting other statutes. Moreover, as previously noted, the regulatory scheme under which this action arose has already been effectively terminated by action of the President. 46 Fed. Reg. 9909 (1981).

Finally, the procedural history of this case renders it ill-suited as a vehicle for adopting a guiding principle of general applicability. This litigation was protracted by a variety of factors—including extensive discovery under-

taken by the plaintiff,[14] efforts to join governmental parties, and management of the litigation by no less than five different judges.[15] Furthermore, the nature of petitioner's single successful substantive claim—retroactive reallocation—makes it difficult to determine the date or dates from which prejudgment interest should run, since the date on which the claim arose has never been clear. *See* A57-A69.

In summary, petitioner has not demonstrated that the courts below erred in denying prejudgment interest, or that the decisions below are in conflict with other cases involving the same or similar issues. Because of the extremely limited significance of this case, either in terms of the EPAA or the broader law of prejudgment interest, there is no cause for this Court to grant review on this issue.

II. THE MEASURE OF DAMAGE COMPUTATION IN THIS CASE WAS CORRECT, AND IN ANY EVENT PRESENTS NO ISSUE WARRANTING THIS COURT'S REVIEW

Petitioner also challenges the district court's method of determining the award of damages. This claim simply reflects petitioner's continuing confusion of the reporting requirements under the regulatory scheme with the pro-

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[14] During the course of seven years of discovery, petitioner took the depositions of no fewer than 49 of respondents' employees, some of them more than once, and conducted substantial documentary discovery. In affirming the denial of petitioner's claims for attorney's fees and multiple damages, TECA suggested that "this torpid litigation" had been " 'unnecessarily protracted by inefficient procedures and management.' " A21, *quoting* Manual for Complex Litigation, frontispiece (5th rev. 1980).

[15] Initially assigned to Judge Clyde Atkins, the case was transferred to Judge James L. King in November, 1974; retransferred to Judge Sidney M. Aronovitz in October, 1976; reassigned to Judge Alcee L. Hastings in November of 1979; and reassigned to Judge Jacob Mishler in December, 1981.

per method of calculating damages in a section 210 action. The district court carefully considered petitioner's damage calculations, and twice rejected them. A78-A82. It recognized that petitioner's error lay in attempting to cumulate monthly overrecovery figures which were themselves cumulative of all previous overrecoveries. A80-A81. TECA affirmed the district court's ruling, rejecting this "obvious fault in Eastern's reasoning." A13. The issue of the damage calculation in this case is not worthy of further review by this Court.

The retroactive reallocation claim advanced by petitioner arises in the context of a complex monthly accounting system which was developed to handle the unique needs of the petroleum price control scheme. The district court heard extensive testimony, including expert testimony, regarding the appropriate means of accounting for the violation alleged by petitioner. The district court's final conclusion was reviewed by TECA, which is thoroughly familiar with the accounting system involved through its continuing supervision of EPAA actions. No broader purpose would be served by further review of this highly specialized determination, which turns upon the examination and understanding of "accounting facts" highly specific to the circumstances of this case.

In any event, the decision below is plainly correct. Petitioner does not deny that it seeks to recover a disproportionate share of the $26.9 million overrecovery identified in this case. Indeed, it states that the damages awarded here "approximated what would have been Eastern's share of the total overcharges had the entire $26.9 million been refunded to all affected purchasers." Pet. at 4. It justifies its illogical claim to additional damages as necessary to further the role of private plaintiffs in the enforcement of the EPAA price regulations.[16] However,

[16] As this litigation demonstrates, the role played by private plaintiffs in the enforcement of the most complex parts of the EPAA regulatory system has necessarily been limited.

petitioner ignores the discretion given to district courts under section 210 to award multiple damages and attorney's fees in appropriate cases. Such provisions offer a far more rational means to encourage litigants in appropriate cases than the hit-or-miss multiplier effect sought by petitioner.[17]

Petitioner's claim that its entitlement to disproportionate damages arises from respondent's failure to refund the alleged overrecovery at some time before judgment, *see* Pet. at 14-15, suffers from the same infirmities previously discussed in connection with the issue of prejudgment interest. Given the numerous allegations raised by petitioner in the course of a nine-year litigation, some of which it did not abandon until the end of trial, and the fact that respondent prevailed on all but one of the remainder, there was no rational means by which respondent could have determined the amount of such a refund until *after* the district court's effort "to 'set things right' between the parties." A22.

In summary, petitioner has sought to appropriate to itself amounts which might rightfully accrue to other customers of respondent as a putative "incentive" to other private plaintiffs. In fact, as both the district court and TECA readily perceived, petitioner is simply trying to increase its recovery by the addition of damages to which it has no color of entitlement. TECA's rejection of this claim warrants no further review.

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[17] The "multiplier" method advocated by petitioner, apart from producing damages in excess of petitioner's share, also produces highly anomalous results for which no explanation can be offered. Applying petitioner's method, for example, an overrecovery of $10,000 in one month would be worth less in damages than overrecoveries of $1,000 each in the five preceding, consecutive months.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

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